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No. 201.

Dft. of Chas. v. Hudson for W. C. P. Com.

Filed Jan. 21, 1901.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL ET AL.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

Error to Supreme Court of Illinois.

(17639.)

SUGGESTIONS IN OPPOSITION TO MOTION OF PLAINTIFFS IN ERROR TO POSTPONE PRINTING OF RECORD.

ROBERT A. CHILDS,
CHARLES HUDSON,
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BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL ET AL., *Plaintiffs in Error,* *vs.* WEST CHICAGO PARK COMMISSIONERS, *Defendant in Error.*	Error to Supreme Court of Illinois. 17 639.

SUGGESTIONS IN OPPOSITION TO MOTION OF PLAINTIFFS IN ERROR TO POSTPONE PRINTING OF RECORD.

Plaintiffs in error seek to delay the printing of the record in this case, and the hearing thereon till after a decision is rendered in Case Number 160, pending in this court (*Cummings* v. *West Chicago Park Commissioners*), because the printing of the record in the usual course "will necessitate the expenditure of a considerable amount of money by the plaintiffs in error, which possibly may be saved to them."

They seem to expect a decision of the Cummings case (No. 160 herein) adverse to the plaintiffs in error, and must further expect to abandon this case as soon as that decision is rendered; for in no other way can the "expenditure" for printed record be "saved to them."

It is also stated in the affidavit in support of said motion that the "opinion (in the Illinois Supreme Court) in its essential particulars is based upon the decision in

Cummings v. *West Chicago Park Commissioners*, 181 Illinois, 136." That statement, although literally true, is misleading, and contains no reason for concluding that the present case in *this* court will be decided on the same grounds as the Cummings case. Indeed, we assert with confidence that quite the contrary will be the outcome; for the issues are different. In the Cummings case the objectors in the County Court and in the Illinois Supreme Court argued that the special assessment proceedings was without due process of law and was in violation of the Fourteenth amendment to the United States constitution, and their briefs now on file in that case argue that question merely. But in the present case, Number 201 (*Farrell* v. *West Chicago Park Commissioners*) that question was not raised in the County Court, was not mentioned or assigned as error in the Illinois Supreme Court, and was not passed upon either expressly or by implication in the Illinois Supreme Court; nor has it been assigned as error in this court. That was the only federal question involved in the Cummings case, and that federal question is not involved in this case. There is therefore no reason why the hearing of this case should be delayed till a decision is rendered in the Cummings case. The only federal question raised anywhere in the present record is under the "*ex post facto*" clause under Article 1, Section 10, paragraph first, of the United States Constitution, which was not mentioned in the Cummings case. (See record 77, objection 12.)

So although it is true that the decision of the Illinois Supreme Court in this Farrell case followed, on matters of state law, the decision in the Cummings case, yet the issues in this, theSupreme Court of the United States, are entirely distinct in the two cases.

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By this writ of error the plaintiffs in error are delaying the collection of a large and important assessment, and by this motion they are endeavoring to experiment with the court. If the Cummings case is decided in favor of the assessment these plaintiffs in error will probably abandon their appeal and save their costs; but if the Cummings case is decided adversely to the assessment these plaintiffs in error will try to bring themselves under the protection of that decision.

We respectfully submit that this court should not encourage such experiment, especially where the real matter at issue is merely the printer's fees.

Respectfully submitted.

ROBERT A. CHILDS,
CHARLES HUDSON,
Attorneys for Def't. in Error.

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No. 201.

Bd. of Chicago v. Nuisance for D. C.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

SUGGESTIONS IN OPPOSITION TO THE MOTION OF PLAINTIFFS IN ERROR FOR LEAVE TO FILE HEREIN ADDITIONAL ASSIGNMENTS OF ERROR.

ROBERT A. CHILDS,
CHARLES HUDSON,
COUNSEL FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

Suggestions in opposition to the Motion of Plaintiffs in Error for leave to file herein Additional Assignments of Error.

I.

The only assignments of error accompanying the return into this court to the writ of error which issued to the Illinois Supreme Court are twelve in number, and are printed upon pages 78 and 79 of the printed record herein.

On the afternoon of Saturday, March 9, 1901, counsel for plaintiffs in error served a notice on counsel for defendant in error that he would on Monday, the 11th day of March, 1901, enter a motion for leave to file additional assignments of error herein, to which said notice were appended thirteen "additional assignments of error," each of which seeks to raise question not theretofore suggested in any form anywhere in the record.

II.

This is contrary to the requirement of Section 997 of the United States Revised Statutes, which provides:

"There shall be annexed to and returned with any writ of error for the removal of a cause at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors."

III.

The only error assigned upon the record in this case which in any way intimates anything in the proceedings of the state courts repugnant to the Constitution of the United States is as follows:

"10th. Said County Court erred in not granting the motion of plaintiffs in error to dismiss said proceeding on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said County Court on behalf of said plaintiffs in error, and said Supreme Court erred in sustaining said County Court."

Which error is assigned in this court for the first time, not appearing in any form in the Illinois Supreme Court. The errors assigned in the latter named court are printed upon pages 64 and 65 of the record herein.

IV.

At the time the notice of this motion was served on counsel for defendant in error the call of this court had been announced for Monday, the 11th day of March, up to and including case number 199, the next case but one

to this case. No brief or argument has as yet been filed in said cause on behalf of plaintiffs in error.

V.

Neither the revised statutes nor the rules of this court, as we understand them under construction given by this court, would permit that such assignments might now be made upon the record, even though a proper foundation has been made for such assignments in the state courts, but in this case, where not a solitary federal question was raised in the Supreme Court of the State of Illinois, as will be seen by reference to pages 64 and 65 of the printed record, there can be no basis for taking and considering said additional assignments of error.

We, therefore, respectfully ask that the said motion be denied, and if said additional assignments of error shall have been filed, we ask that they be stricken from the files.

Respectfully submitted.

ROBT. A. CHILDS,

CHARLES HUDSON,

Counsel for Defendant in Error.